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**FILED**

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SECRETARY, BOARD OF  
OIL, GAS & MINING

**BEFORE THE BOARD OF OIL, GAS AND MINING  
DEPARTMENT OF NATURAL RESOURCES  
STATE OF UTAH**

In the Matter of the Request for Agency Action  
by

Penney's Gemstones, David L. Penn,

Petitioner,

For Review of the Division's Cessation Orders  
and Assessment of Penalties, Sliver 1-2 Mine,  
Beaver County, and Little Spot Mine, Millard  
County

**PENNEY'S GEMSTONES  
MEMORANDUM IN SUPPORT  
OF PETITION FOR REVIEW**

Cause Nos. S/027/024 – Little Spot  
S/001/035 – Sliver 1-2

Docket No. 2007-002

Penny's Gemstones LLC ("Penny") hereby respectfully submits its Memorandum in  
Support of Petition for Review.

**STATEMENT OF FACTS**

**The Sliver 1-2 Mine, Beaver County**

1. Penny's Gemstones is the owner of the unpatented Sliver 1-2 mining claim located on public lands in Beaver County, State of Utah.
2. The Sliver #1-2 mining claim is a fraction that is surrounded by older patented mining claims including a claim that is owned in whole or in part by an individual named Karl Truman.
3. Sometime prior to the issuance of the Cessation Order dated September 2, 2005, Mr. Truman had his patented mining claim surveyed by a licensed surveyor.



4. Thereafter, Karl Truman met with David Penny on site and advised Mr. Penny as to the surveyed location of the boundary line. At this time, both Penny and Mr. Truman orally agreed to use that surveyed boundary line as the property line between their respective claims.

5. This agreed upon surveyed boundary line was utilized by the property owners as the actual boundary line until, for reasons unknown, Ed Genouves, a geologist with the Bureau of Land Management, conducted a survey by global positioning satellites of the respective claims utilizing old claim monuments he purportedly located on the ground.

6. According to this BLM survey, the Sliver1-2 mining claim at issue herein is located mostly on the patented mining claim of Karl Truman.

7. Based solely on this information, Thomas Monson of the Division of Oil, Gas and Mining ("Division") issued a Cessation Order asserting that Appellant did not have a right of entry. *See* Exhibit 1 of the Division's Response to Petition for Review.

8. In addition to ceasing all mining activities, Penny was ordered to obtain a lease from Karl Truman and to post a \$15,000 reclamation surety or immediately commence reclamation.

9. To avoid protracted litigation and other expenses, and notwithstanding the fact Mr. Penny disagrees with the survey performed by the BLM, Penny proceeded to seek to negotiate a mining lease with Karl Truman.

10. In fact, after extended negotiations, Penny presented to Mr. Truman a written lease for signature together with a check for partial consideration of \$500. Although Mr. Truman negotiated the check, he has refused or otherwise failed to execute the proposed mining lease.



11. Moreover, notwithstanding Mr. Truman's letter dated March 1, 2006 to the Division stating that he has granted David Penny permission to perform the required reclamation, he has in fact advised Penny that he does not desire to have him reclaim the mine and, based on the BLM survey, has refused Penny a right of entry to do so.

12. Given that Mr. Truman has for years allowed third parties to mine his property for a fee, he has apparently taken the position that the Sliver #1-2 mine is another source of material for which he can receive additional monies.

13. To date, however, Mr. Truman has refused or otherwise failed to file a Notice of Intent to Mine the Sliver #1-2 and, therefore, no reclamation bond exists with respect to it.

Little Spot Mine, Millard County

14. Penny is the owner and operator of the Little Spot Mine located in Millard County, State of Utah.

15. To maintain the area of the Little Spot Mine below the five acre limit for a small mine permit, in the spring of 2005 Penny was preparing to reclaim and reseed a portion of the mine.

16. After having prepared the ground for reclamation, however, Thomas Monson of the Division advised Penny to wait until the fall of 2005 to broadcast the seed mix. Based upon this conversation, it was Mr. Penny's understanding that by waiting until the fall of 2005 the area prepared for reseeding would not be counted towards the five acre acreage limitation or he would otherwise have proceeded with the reseeding.

17. In reliance on this understanding, Penny continued its activities at the Little Spot Mine.



18. Thereafter, for reasons unknown, the BLM requested a joint inspection of the mine to determine the extent of the mine disturbance and the adequacy of the reclamation bond. See Exhibit 10 of the Division's Response to Petition for Review.

19. During the joint inspection on June 30, 2005, a global positioning survey was performed that determined the total disturbed acreage to be 8.75 acres. *Id.*

20. Upon information and belief, however, this determination not only included the area that had already been prepared for reclamation (but not reseeded in the spring at the request of the Division, but also pre-existing disturbances that were not caused by Penny.

21. But for the inclusion of said disturbances, the Little Spot Mine does not exceed five acres.

### **ARGUMENT**

#### **I. With Respect to the Sliver 1-2, Division Improperly Issued the Cessation Order Prior to Conducting a Proper Investigation.**

Penny does not dispute that a mine operator is required under the Utah Mined Land Reclamation Act to identify the owners of the surface affected by the mine. Likewise, Penny does not dispute that the Division, after proper investigation, has the authority to order cessation of operations if there is a danger of permanent environmental harm.

In this case, however, the Division ordered the cessation of operations without first conducting a proper investigation as to ownership of the surface. More specifically, Mr. Truman, the owner of the patented mining claim, had previously had his property surveyed by a licensed surveyor. Both Penny and Mr. Truman agreed to honor that surveyed line as the property line between their respective claims. For reasons unknown, a BLM employee conducted a G.P.S. survey after purportedly locating the appropriate claim monuments on the



ground. Based on this information alone, and without conducting any formal survey, the Division erroneously issued its cessation order.

Penny respectfully requests the Board to vacate that order and enable all interested parties to conduct proper surveys so as to ascertain the true ownership of the surface estate upon which the mine is located.

**II. With Respect to Little Spot, the Division Erroneously Calculated the Acreage to Exceed Five Acres.**

As set forth in the factual statement, in the spring of 2005, Penny had prepared the surface of a portion of the mine for reclamation when he was requested to wait until fall to reseed the reclaimed land. Penny understood that by agreeing to wait until fall that portion of the mine would not be counted towards the five acre limitation for a small mine. Further, the acreage included as the basis for the cessation order included prior mining disturbances that pre-date his operations.

But for the foregoing, Penny maintains the Little Spot mine does not exceed five acres and, therefore, the cessation order was improperly issued.

DATED this 11<sup>th</sup> day of June, 2007



Brent A. Bohman  
Attorney for Appellant



**CERTIFICATE OF SERVICE**

I hereby certify that on this 11<sup>th</sup> day of June, 2007, a true and correct copy of the foregoing **PENNEY'S GEMSTONES MEMORANDUM IN SUPPORT OF PETITION FOR REVIEW** was hand delivered to the following:

James P. Allen  
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*Utah Division of Oil, Gas & Mining*

